

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES ROBINSON,

Defendant.

2:95-CR-58-RCJ-1

ORDER

Currently before the Court are six motions: a motion to vacate under 28 U.S.C. § 2255 (Doc. (#490)), three motions to appoint counsel (Docs. (##491, 492, 495)), an unsigned letter requesting documents (Doc. (#493)), and an unsigned request for an evidentiary hearing (Doc. (#496)). For the reasons discussed herein, the motions are denied.

BACKGROUND

In August, 1995, a jury convicted Petitioner James Robinson for the felonies of (1) unlawful use of a communications facility and (2) attempting to possess cocaine with the intent to distribute. (See Doc. (#458) at 2). He was sentenced to 262 months in federal prison. (See *id.*) The Ninth Circuit Court of Appeals upheld his convictions on direct appeal in October, 1997. (See *id.*)

At some point before 2002,¹ Petitioner filed a motion for relief under 28 U.S.C. § 2255. (See Doc. (#374) at 3). Petitioner supplemented this motion, but the Ninth Circuit ultimately

¹ The record is unclear on when Petitioner filed his first § 2255 motion. Petitioner filed it after his direct appeal in October, 1997, but before his successive motions, which were decided in 2002 (Doc. (#345)).

1 denied it. (See *id.*) Both this Court and the Ninth Circuit declined to issue a Certificate of
 2 Appealability. (Docs. (##184, 207); see Doc. (#374) at 3).

3 Since being denied a Certificate of Appealability, Petitioner has continuously filed more
 4 letters and motions that fall under the jurisdiction of § 2255. (See Doc. (# 374) at 3). The
 5 Ninth Circuit reviewed and denied on the merits at least five applications for authorization to
 6 file successive § 2255 motions. (See Docs. ## 380, 383, 426, 436, 446, 487 (voluntarily
 7 dismissed by Petitioner)).

8 Before 2002, Petitioner filed at least five successive motions to vacate. (See Doc.
 9 (#374) at 3). In 2008, Petitioner also filed multiple motions for an appointment of counsel
 10 (Docs. (# 408, 409, 410, 412)), and motions for an evidentiary hearing (Docs. (##408, 409,
 11 412)). The Court denied these motions. (Docs. (## 374, 418)).

12 On August 25, 2008, the Court granted Petitioner's motion to reduce his sentence from
 13 262 months to 210 months due to a new sentencing law passed after Petitioner was convicted.
 14 (Doc. (#406)). On August 6, 2010, he was released from prison, but subject to six years of
 15 supervised release. (See Doc. (#484) at 2). However, on February 12, 2011, Petitioner was
 16 arrested for violating the terms of his supervised release. (See Doc. (#465)). The Court
 17 revoked his supervised release, and sentenced Petitioner to ten months in prison without
 18 additional supervised release. (Doc. (#481) at 2-3). Petitioner was released from prison on
 19 December 14, 2011.²

20 LEGAL STANDARD

21 A district judge may not entertain an application for a writ of habeas corpus to evaluate
 22 the detention of a federal prisoner except by 28 U.S.C. § 2255. 28 U.S.C. § 2244(a). Section
 23 2255 only applies to prisoners "in custody under sentence of a court established by Act of
 24 Congress." 28 U.S.C. § 2255(a). A person is in custody of the United States if his or her
 25 movements "are restrained by authority of the United States" *Jones v. Cunningham*, 371

26
 27 ² Inmate Locator, Federal Bureau of Prisons,
 28 <http://www.bop.gov/iloc2/InmateFinderServlet?Transaction=IDSearch&needingMoreList=false&IDType=IRN&IDNumber=30289-048&x=78&y=16>.

1 U.S. 236, 240 (1963) (internal quotations omitted). If the petitioner is released from custody
2 of the respondent, the petition becomes moot. See *id.* at 241.

3 DISCUSSION

4 Petitioner asks the Court to vacate his sentence on four grounds: (1) the government
5 violated his constitutional rights by withholding evidence, (2) *Brady*³ violation by the United
6 States Attorney's office, (3) the lead investigator fabricated evidence that led to Petitioner's
7 arrest, and (4) prosecutorial misconduct by allowing "perjury testimony." (Doc. (#490) at 6-9)
8 (emphasis in original).

9 Petitioner is no longer in the custody of the United States, nor is he under supervised
10 release or otherwise restrained by the United States. Therefore, his § 2255 motion to vacate
11 (#490) is denied as moot. The Court also denies as moot Petitioner's motion for an
12 evidentiary hearing (#496), motions for appointment of counsel (## 491, 492, 495) and motion
13 for copies of documents (#493).

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28 ³ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

CONCLUSION

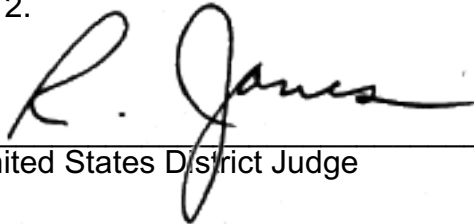
For the foregoing reasons, IT IS ORDERED that Petitioner's Motion to Vacate (#490) is DENIED as moot.

IT IS FURTHER ORDERED that the Motions for Appointment of Counsel (## 491, 492, 495) are DENIED as moot.

IT IS FURTHER ORDERED that the Motion for Copies of Documents (#493) is DENIED as moot.

IT IS FURTHER ORDERED that the Motion for an Evidentiary Hearing (#496) is DENIED as moot.

DATED: This 3rd day of August, 2012.


United States District Judge